

Conservation Commission, January 23, 2013

Town of Scituate Massachusetts

Conservation Commission

Town Hall Selectmen's Hearing Room

Meeting Minutes

January 23, 2013

Meeting was called to order at 6:17 p.m.

Members Present: Mr. Snow, Chairman, Mr. Breitenstein, Mr. Harding, Ms. Scott-Pipes, and Mr. Tufts.

Also Present: Patrick Gallivan, Agent; Carol Logue, Secretary

Agenda: Motion to amend the agenda to include a Show Cause Hearing for Dealy, 315 Central Ave.; Discuss NOI vs RDA vs. Discussion with Agent Ms. Scott-Pipes. Second Mr. Harding. Motion passed by unanimous vote.

Mr. Snow introduced the new Conservation Agent Patrick Gallivan.

Request for Determination: Blake, 147 Captain Peirce Road (addition) (cont.)

Ms. Scott-Pipes recused herself. Kate Blake was present at the hearing. Project is a small addition. It is in an already disturbed area. Mr. Snow: Patio too? No. Mr. Gallivan: only question is the determination of the stream, intermittent or perennial; may want to be put a reference on the determination. It is probably 180' to the edge of the stream. Mr. Snow: Who marked the wetlands? Wetlands were on the septic as-built. Motion for a negative 2 determination - "The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent." Mr. Breitenstein. Second Mr. Harding. Motion passed by unanimous vote. Keep any stockpiling away from the wetlands. If there is any chance of any siltation going toward the wetlands, put some hay bales around the piles. No work is to be done toward the wetlands.

Wetlands Hearing: Sheerin, 305 Country Way (wetland delineation)
(cont.)

Greg Morse, Morse Engineering and Brad Holmes, Environmental Restoration and Consulting, LLC were present at the hearing. Site walk took place with Brad Holmes, Steve Ivas, Commission's consultant and Commission members. Revised plans dated January 15, 2013 were submitted to reflect the wetland flags as reviewed in the field; blue indicates the BVW, the bank of intermittent stream is shown and Zone A is shown in orange. Wetland delineation is endorsed by Steve Ivas. Revised flags in the field and on the plan. Soils tests were done and BVW data sheets. Lenore White, professional wetland scientist representing Mr. Krusell: Concerns during the site walk; review somewhat limited; couldn't discuss much. A subdivision had been proposed and the whole area was determined to be wet. Have doubts about the wetland line. Stream channel exists at the culvert, which couldn't be looked at, but it is jurisdictional. In November 2012, 5 Williamsburg Lane was determined to have a BVW. Consultant's report was confined to outfall pipe. All evidence adjacent to outfall is BVW; happy it is shown on the plan. Mr. Ivas: specifically looked at Brockton soils by Conservation Service, 1 case in Norwell, 2 in Hanover, and 1 case in Scituate, where there is wetland vegetation at shrub layer, with non-hydric soils below. There is sandy soil at the surface of all slopes. Mr. Holmes and Mr. Ivas performed multiple soil tests. Regarding the outfall, few common elder plants are living on the bank, hydric soils directly in front of the outfall. Who flagged the wetland around the pipe in 2012? Brad Holmes. Mr. Holmes: Closest point resembling a wetland was the outfall. Concentration was to document upland conditions. The general area is not dominated by wetland vegetation. Could not trespass onto someone else's property; the site was looked at very closely; they feel it is as accurate. Mr. Ivas: In 1987 the line was higher on the hillside because the state regs, delineated wetlands by vegetation only, but changed to soils and vegetation in 1996. It is a science and can be difficult. Ms. White: soils are very difficult; have had many challenges; colors are closely related, but when there is 6" to 8" of dark brown soil at the top, given the location and vegetation, they are hydric indicators. There is a valid permit that says there is a wetland at 5 Williamsburg Lane. Mr. Snow: There are some changes on the plan. Bruce Brock marked the tributary, but still unclear who has

jurisdiction. When he walked up that piece near the intermittent stream that turned into a boulder field, did he have any remarks about the wetland? Mr. Breitenstein: Primarily focused on the flow of water to the reservoir, whether above or below ground, not the characteristic of how it gets there. Williamsburg Lane was approved; it becomes an intermittent stream. You can tell it is not a wetland at the headwall. Looks like siltation of sand and gravel from the road. Lisa Bertola: 52 Elm Street: Does a lot of work regarding sustainability. Concerned we have a water supply issue. Every year there is a water shortage. Walked the property many times, urge the decision makers to protect the resources. There is a 200' buffer from the tributary. Any interruption of the flow would be concerning. Mr. Snow: just defining the wetland line with this filing. There are buffer zones to the wetland line and there is no project in front of us. The biggest piece is the tributary and the buffer zone to that. Seems strange it is not our jurisdiction. Trying to make sure the line and resources are correct, but cannot go off property to flag wetlands. The applicant has certain rights as well. The tributary is well protected. Mr. Gallivan: is top of bank flagged? Yes for both intermittent streams. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Breitenstein. Motion passed by unanimous vote.

Wetlands Hearing: Perkins, 309 Central Ave. (septic repair) (cont.) Applicant's representative requested a continuance. Motion to continue the hearing to March 4th, 2013 at 6:20 p.m. Ms. Scott-Pipes. Second Mr. Breitenstein. Motion passed by unanimous vote.

Wetlands Hearing: McSharry Brothers, Lot 1 218 First Parish Road (new build) (cont.)

Wetlands Hearing: McSharry Brothers, Lot 2 218 First Parish Road (new build) (cont.)

Lenore White, Wetland Strategies and Michael McSharry were present at the hearing. Apologize last week for submitting plans late. There are 2 NOI's each proposing a single family home. Site plan shows both lots with proposed construction, septic, driveway and location of isolated wetland; delineated by Lenore White and Steve Ivas. There are a couple other smaller isolated wetlands, probably just perc tests. The whole area is pock marked with perc tests, hydric soils 8" to 10" below

top soil. Proposal doesn't meet your bylaws. With this wetland system located where it is, this property is undevelopable. With that understanding we requested a variance. We are now proposing to provide some mitigation for that variance. If we can't alter, we can't do any work. Mitigation: anything north of the orange line on plan will be donated to the town, potential vernal pool off property. There is other open space adjacent to the property. Proposing 5,400 sq. ft. of replication, which is 1 to 1. Client offered to donate \$5,000 to the town toward open space development, or an education fund. Will try and develop the area being consistent with the neighborhood and zoning.

Steve Ivas: disagree wholeheartedly with 1st point of just a pockmarked area. There are black organic soils, with mature red maples that have been there for a long time. Isolated wetland has been there a long time. Most recent plans don't show the stone walls, which is required. Ms. White should be well acquainted with inland wetland guidelines regarding replication, but not addressed at all, need to know that replication will be successful; show some elevations, choose some plants; none of that work has been done. Mr. Ivas feels the filing is incomplete. Mr. Snow: appreciate proposal to see if we were interested and what Steve is saying, but if they were to go forward would need a lot more information. Ms. White: there are hydric soils; this whole site has been disturbed. Don't really know what it looked like before. As far as it being a historical wetland, no definitive answer. Mr. Ivas: no tests in the majority of the area, except right on the edges. There are natural soils over other natural soils, certainly all is not disturbed. May have been a wetland there that connected to a BVW; travels into a huge red maple swamp. Appreciate we haven't submitted everything. We could design a replication plan to be approved. Mr. Gallivan: under the WPA, avoid wetland as much as possible, doesn't appear the disturbance has been minimized. Town bylaw prohibits more than 2,500 sq. ft. to be destroyed. Mr. Snow: there is a lot of property that cannot be built on. Ms. White: We have done the best to work with the town to try and protect the wetlands in the back. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Breitenstein. Motion passed by unanimous vote.

Wetlands Hearing: Carbone, 25 Town Way Extension (install septic tank) (cont.)

Board of Health has approved. Mr. Breitenstein discussed and suggested the benchmark order be added. Benchmark shows when material should be put back over the system. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Breitenstein. Motion passed by unanimous vote.

Wetlands Hearing: Vogel, 327 Central Ave. (addition & deck) (cont.) Tom Pozerski from Merrill Associates was present at the hearing. Commission asked for mitigation along the marsh; proposing more than 2 to 1 for the size of the alteration. Plantings are indigenous and details/notes are on the plan. Changed driveway from asphalt to pervious pavement, shrunk stairway, and went to Board of Health regarding placement of tanks. One tree is dying, would like to replace; will install erosion controls; and replacing wall with retaining wall. Ms. Scott-Pipes: thank you, especially the driveway. Mr. Breitenstein: addition height will be above the flood elevation and in compliance with the building code? Yes. Mr. Harding: nice job. Mr. Gallivan: does the River's Protection Act come into play? First 100' is undisturbed? This is a unique property. Lot was created prior to August 1996, actually created in the '50s. Entire lot is in the riverfront area. Not filling any floodplain. Percentage of riverfront disturbance is below 10%. Mr. Bjorklund: requiring bolt down covers on the septic? Yes. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Breitenstein. Motion passed by unanimous vote.

Show Cause Hearing: Chris Dealy, 315 Central Ave. Elizabeth Sherman and Chris Dealy were present at the hearing. A letter and pictures were submitted explaining the circumstances. After receiving the initial letter from the Commission, 1 day was spent removing built-up silt and repairing the fence, then received a request to come to this meeting. On January 16 they replaced the entire silt fence and straw wattle plus added additional stakes. Maybe you should take a look at the expiration date of the orders. Mr. Gallivan: sock or hay bale may work better and last longer in that area; should have had a preconstruction. Mr. Snow: I hope you understand our concern, need to keep debris out of the marsh. Check orders before they expire.

17 New Driftway: Jill Burke and Joanie Wilson would be applicants if

filing is required. Bob Burek, owner was present. Applied for a building permit to convert a maintenance building for take-out pizza and the building inspector sent it to Commission for review. As part of the renovation a 7' x 7' bump out is required for the pizza oven. There is an existing Order of Conditions. In the past there was some concern about siltation, but worked that out with Jim. The town probably did more damage when the sewer connection was put in. Could be an amendment to the Orders; Greg Morse filed the original permitting. If we file for an amendment, we would like to ask if the fees could be waived. The filing included a new building and site work. Given the scope of the original filing, waiving the fee would be fine. This is a 49 square foot bump-out with pervious material around the building. Any place for some extra mitigation, if the Commission decides it is within the scope of the project? Could add twice as many plantings. Submit a sketch of what will be done out there.

Request for an Amendment for Lot 4B & 6 Mann Hill & Hood Road: Kevin Grady was present. The applicant wants to use the triangle and as discussed at the hearing, the Commission wanted it left alone. Also, originally asked them to put trees along the whole 50' buffer line. Mark off the 50' with the 4' plantings. Posts with signs should be moved to the 46' contour line. Kevin Grady called Frank Snow and was told the only way to handle this would be with an amendment. Motion to accept the amendment Ms. Scott-Pipes. Second Mr. Breitenstein. Motion passed by unanimous vote.

32 Gardiner/28 Otis: Greg Morse was present. He was contacted by the Ayers after they received the Show Cause Hearing letter. Commission requested erosion control barrier, installed a hay bale line down gradient. Threw grass seed on exposed soils. It was late in the season, but portion of the grass seed came up. Extent of work on property is extensive. At the back of the property is a salt marsh and land subject to coastal storm flowage. Property cleared – trees taken down between this property and neighbors. Then several uprooted and blew down. In 2005 the town constructed a drainage easement, but constructed it approximately 20' from where it was supposed to be. Needs to work with DPW regarding that; or there is potential for constructing a new drainage system. Basically what is there are gabion

bags, which are bags of wire mesh filled with stone about the size of this table. The purpose is to keep water from becoming a sheet flow. Any wetland delineation done? Brad Holmes came out for a consultation. The only way soils would become hydric would be from the gabions. Is DPW involved? Very limited. Area needs more investigative work and soils evaluated. Definitely worked in places they shouldn't have. New 4" drain pipe installed. They did more than they should have by far. They need to do a restoration plan and look at neighbor's property, muddy, wet, awful soil, and now no trees either. Don't know how the drainage will be resolved. Hard to do an after-the-fact Notice of Intent; need a restoration plan, or an Enforcement Order. Ms. Scott-Pipes: cleared right down to the marsh. Drainage swale came in after-the-fact. We asked them to delineate the wetlands and buffer zones. Now he is coming back to the town about the easement and pipe, which is strictly DPW. He denied knowing about the other pipe that drains directly to the marsh. Greg Morse: in defense, it is a 4" pipe and the Indian Trail neighborhood has all sorts of pipes. Can't really say he installed it. Two separate issues going on. Mr. Snow: If we don't see some more positive action, we will further evaluate. He did put the waddles out and grassed the area, but definitely need a Notice of Intent for a restoration plan.

Order of Conditions: Anthony, Thomas Clapp Road (new build)
Motion to condition the project Ms. Scott-Pipes. Second Mr. Breitenstein. Motion passed by unanimous vote.

CofC's

49 Seaside Road: enclosed stairs, lateral supports, fire pit, 2" x 12" board across the front with a lip, looks like a built in bench. This is an eroding beach, cannot remove cobble from under the house. Also there is a pergola and a gigantic hot tub. Mr. Gallivan is going out Friday morning if anyone wants to join him.

Minutes: December 5, 2012

Motion to approve the minutes of December 5, 2012 Ms. Scott-Pipes. Second Mr. Breitenstein. Motion passed by unanimous vote.

Brenda Hunt: status of repairing Peggotty Beach snow fence. If we

don't repair the fence, people will just trample the dune. Possibly we could get high school students to help, for part of their community service, with supervision. A lot of the fence could be resurrected and saved. We received mitigation money from Liam Vickers and he and Jim O'Connell went out and put it up. Storm and over wash ruined that. Kids have used some slacks for fires. The longer we wait, the worse it will get. Mr. Snow: all we can do is try to keep people off the dune. Can we tap into the beach sticker fees? We can request some money from the Town Administrator, beach funds or something. You may want to as well. If more have concerns, should speak up. Think the beach stickers go into an enterprise fund. Send a letter to TA and Selectmen. Ms. Hunt: We know storms will take out, but should hold better if done right. There is no parking after 9:00 p.m. spring and summer, maybe if we ticket for \$50 a whack; just trying to be creative. Not meant to be a wall, it is almost sacrificial, but how do you protect from vandalism?

Rosemary Dobie: one of the main reasons for snow fence is to trap sand and help build up dunes.

CRS question, former member of the Committee. Is the agent's contract tasked with heading up the CRS rating system? Mr. Gallivan: Didn't see that in the job description and not familiar with it. It is a program that helps people in the flood plain to lower their flood insurance. Need to perform a number of tasks. There is a tremendous amount of work associated with it. Mr. O'Connell and the Committee completed the 5 year round, but everything takes planning. A lot more could be done to lower the rates more. Haven't moved forward at all. Maybe we should try and protect the beach and road first.

Mr. Snow: Thursday, January 31 at the Mount Hope Improvement Society at the intersection of Cedar and Clapp the Conway School will be looking for input from different folks regarding the Bates Lane and Crosbie property. You will have the opportunity to state your likes and dislikes; make suggestions on parking, trails, access, hiking, mountain biking, bird watching, whatever activities you are interested in. Also talk about habitat enhancement, forestry, or do we want to add hiking trails, or rethink parking for certain loops. Appleton field right now is licensed to an organic farmer. There is a modification to the access being worked on. They are going to run the meeting and touch on as many

things as possible. Lot of that property was acquired with our CPC money. Want to be sure it is done responsibly. There was a plan done for Marshfield and suggestions of how it could be best used. The students are in a master's program. They will be done with this by the end of March.

We received a letter from a concerned person on Indian Trail. Mr. Snow felt he should recuse himself and let someone else discuss. Don't necessarily agree with everything in the letter, and don't have to answer at all. A lot of it had to do with Board of Health. Usually, we have multiple hearings on projects. Aware of his concerns and our own concerns. Maybe send a letter back. I'm afraid he is asking for something that isn't going to happen. Wetland is across the street, in the front only. Maybe state, we did everything we could and thank you for your concern and we will keep it in mind. Ms. Scott-Pipes: can't deny a project just because we don't like building. We should invite him to join us and share his expertise. Mr. Gallivan: some towns add an additional 50'; a lot of this is Board of Health. A lot of things in Title V made sites more viable. What he is actually complaining is really not our jurisdiction.

Mr. Breitenstein: There will be an executive session coming up. The lawyers are finally done with Glades Road and 214 Clapp Road. It seems like they have ironed things out. Want an e-mail from the attorney to Mr. Gallivan and appropriate members.

Mr. Snow: One item that came up was the difference between a Notice of Intent and a Request for Determination. An RDA can handle simple projects, based on distance and complication. Any project on the beach would have to file. Seems like overkill for a Notice of Intent for 2 concrete sonotubes, but anything in a resource area or coastal area would have to file something. If a person wanted to dig along his foundation to carry rain water from his foundation, an RDA should be enough. Most landscape projects, patios, etc. could be handled with an RDA. If a tree falls or needs to be cut down because it is a hazard, discuss with agent. Don't need the Commission involved. There have been a couple of show cause hearings: Fence was put in along the marsh, dug approximately 20 post holes. Sent a Show Cause letter to

the owner because the office received complaints. Definitely have to follow up on 28 Otis. Mr. Gallivan: do homeowners always have to hire a wetlands consultant? There are cases where it may not be required. Simple projects don't, if you have the time to check, but be careful of your time. Mr. Bjorklund: Should be cautious about French drains because of the stormwater bylaw. Not in the bylaw, but stormwater falls under Commission's jurisdiction if property is jurisdictional, if the drainage will be changed.

Mr. Snow recused himself. At a lot up on Indian Trail someone was doing a perc test, was given the OK, but inched closer and closer and ended up in the 100' buffer. The person didn't know if she needed to file an after-the-fact RDA for the perc or file an NOI. No work in the resource area. Mr. Breitenstein: that's a tough one. They are going to be filing anyway. Could go out and take a look. It is annoying to find they've cut a lot of trees to do perc tests. Mr. Bjorklund: In Scituate the 100' buffer is a resource area. The GIS is not great. Hard to go out and look at everything. Once in a while you find a septic or addition a little closer to the wetland. We had that issue at Steverman's Farm. Could have 10 building applications, but still wouldn't know for sure about the wetlands unless you went out and covered the whole lot. Simple calls can be made by the agent.

There was a Tree meeting with Mike Breen and George Story. Don't think any of the trees are in our jurisdiction. They are on town property. There are a lot of trees, however. Mr. Bjorklund: biggest issue is the question of grinding or pulling out the stumps. Mr. Snow: Might check with Mike Breen.

CORRESPONDENCE

January 10, 2012 – January 23, 2013

1. Request for Amendment - Revised plans for Lot 4B & 6 Hood Road – client does not want to leave triangle (in file)
2. Recording of OofC for 68-2445 – 188 Central Ave (in file)
3. Ohrenberger Associates re: 68-2400 – OofC Kelly, 56 Moorland Road – requesting DEP to dismiss the appeal (in file)
4. Planning Board agenda for January 17, 2013
5. RiverWatch Newsletter
6. Current status and as-built 41 Strawberry Lane (in file)

7. Revised plans for 305 Country Way – revised 1/15/13) (in file)
8. Morse re: 5 Williamsburg Lane – Disposal System approval should not be issued = Zone A (tributary) (in file)
9. Revised plans and summary for revisions - 327 Central Ave. Sheet 1 of 1 (in file)
10. Request for CofC for 63 Glades Road – 68-2399 – Engineer's verification, as-built, and check (in file)
11. Mass Congress of Lake & Pond Associations Water Wisdom Newsletter
12. DEP re: 68-2400 – 56 Moorland Road - Appeal for Superseding OofC Denied – not submitted within 10 business days of the OofC, also attempted to notify abutter by certified mail (in file)
13. Recording of CofC for 68-1154 – 35 Brunswick Street (in file)
14. Selectmen's agenda for 1/22/13 & Amended Agenda – Welcome New Conservation Agent
15. NFIP/CRS Update
16. Removal of 23 town-owned trees by National Grid on Tilden, Hollett, and Gannett and a cover letter from an abutter – forwarded to the Commission.
17. Ivas Environmental re: ANRAD Peer Review – Thomas Clapp & Booth Hill Roads (in file)
18. Planning Board Agenda for January 24, 2013
19. Foreclosure against 1001 Chief Justice Cushing Hwy – Recorded OofC. Requesting a CofC and what is required.
20. MACC Training Schedule and Application for Tuition Assistance
21. MACC 2-13 Conference
22. Recording of OofC for 41 Strawberry Lane (in file)
23. Request to continue 309 Central Ave. still waiting for information from applicant's landscape architect (in file)
24. Copy of e-mail from Lance Van Lenten re: informing other boards about the confirmed tributary running from culvert off Country Way to Tack Factory Pond as shown on DEP maps.

Meeting adjourned 8:45 p.m.

Respectfully submitted,

Carol Logue, Secretary